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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 07/02/2003

3

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/058,620

Applicant(s)

CARTER, KENNETH

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: "33" in Figs. 1-5. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities: on page 3, line 1, "he" presumably should be changed to --the--.

Appropriate correction is required.

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: the "side portions" referred to on line 2 of claim 1 does not find support in the specification; and the "angle of approximately 35 degrees" of claim 4 is not supported in the Detailed Description portion of the specification.

Claim Rejections - 35 USC § 112

4. Claims 3, 4 and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 3 and 7 refer to a means for selectively adjusting the length of the handles or a mount permitting adjustment of the length of the handles. It is not clear exactly what aspect of the invention is being claimed. The handles 28 are not selectively adjustable in their length. They are selectively adjustable in their linear positioning relative to respective lever ends. Presumably, the claims are referring to a means for selectively adjusting the linear position of the handle or to a mount permitting adjustment of the linear position of the handles.

Claim 4 recites the limitation that the levers "extend away from each other at an angle of approximately 35 degrees." The angle of 35 degrees is not disclosed in the Detailed Description but is referred to in the Summary of the Invention. The Detailed Description, on page 5, lines 23-25, discloses that the arms "extend outwardly from each other at an angle of about 45 degrees." The Summary of the Invention, on page 2, lines 15-16, discloses that the two arms "run outwardly from each other at an angle of about 35 degrees." Furthermore, it is unclear from the specification how the angle is to be defined, i.e. the angle between the two arms or the angle of each arm relative to a centerline of the machine. Presumably, the angle is defined as the angle between the two arms, since that is what appears to be stated in the specification.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 3 and 5-7 are rejected under 35 U.S.C. 102(e) as being anticipated by *Voris* (US Pat. 6,471,624 B1). *Voris* discloses an exercise machine comprising a support frame 10 having a base 22 and side portions 12; a seat portion 90 pivotally mounted 72 on the support frame; a back rest portion 92 hinged 70 to the seat portion; a calibrated adjustment lever 82 for setting the seat portion at one of a plurality of pre-selected positions at different distances from the base portion of the support frame; the end of the back rest portion connected to the seat portion moving along with the seat portion to bring the back rest portion towards a vertical position; a pair of opposing levers 30 connected together at one end 50, the levers having supports 29 thereon for supporting weights 52; and handles 36 mounted on the other ends of the levers for use in grasping the levers. The handles are removably mounted on the levers and permit selective positioning relative to the lever ends. The handles, being offset, are also permitted to be axially positioned in one of two positions 180 degrees apart. The levers are pivotally supported on the frame.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1 and 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Voris* (US Pat. 6,471,624 B1). *Voris* has been discussed above, and such discussion is incorporated herein. *Voris* discloses the invention as claimed except for the levers extending away from each other at an angle of approximately 35 degrees (claim 4).

The levers of *Voris* initially extend away from each other at an angle of approximately 180 degrees and then the levers have a first bend wherein portions of the levers extend away from each other with an angle between the two levers of approximately 90 degrees. A change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to extend the levers of *Voris* from each other at an angle of 35 degrees because Applicant has not disclosed that 35 degrees provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally as well with levers extending at an angle of approximately 90 degrees because the handles would still

be positioned within easy reach of a user. Therefore, it would have been an obvious matter of design choice to modify *Voris* to obtain the invention as specified in claim 4.

9. Claims 1, 2 and 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Danylieko* (US Pat. 5,098,361) in view of *Snyderman et al.* (US Pat. 5,069,447). *Danylieko* discloses an exercise apparatus comprising a support frame 18 having a base and side portions; a pair of opposing levers 12,16 connected together at one end 34, the levers having supports thereon for supporting weights *W*; and handles 62 mounted on other ends of the levers for use in grasping the levers. Weight saddles 43,47 are height adjustable to adjust the static height of the levers. The levers are pivotally supported by means of swivel brackets 52,56. The user is typically supported on a weight bench during use (Figs. 6-10).

Danylieko does not disclose a seat portion pivotally mounted on the support frame (claim 1); a back rest portion hinged to the seat portion (claim 1); a calibrated adjustment lever for setting the seat portion at one of a plurality of pre-selected positions at different distances from the base portion of the support frame (claim 1); the end of the back rest portion connected to the seat portion moving along with the seat portion to bring the back rest portion towards a vertical position (claim 1); and the levers extending away from each other at an angle of approximately 35 degrees (claim 4).

Snyderman et al. discloses a weight bench comprising a seat portion 110 pivotally mounted on a support frame having a base 14 and side portions 12; a back rest portion 108 hinged 104 to the seat portion; a calibrated adjustment lever 94 for setting the seat portion at one of a plurality of pre-selected positions at different distances from the base portion of the

support frame; the end of the back rest portion connected to the seat portion moving along with the seat portion to bring the back rest portion towards a vertical position; and means 32 for selectively adjusting the heights of weight saddles 42 above the base portion of the support frame. The adjustability of the seat and back portion allows a user to perform various exercises, such as the bench press and the inclined bench press.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the exercise apparatus of *Danylieko* with the adjustable weight bench of *Snyderman et al.*, in order to position a user's body in a variety of positions to perform a variety of exercises on a single user support.

The levers of *Danylieko* initially extend away from each other at an angle of approximately 180 degrees and then the levers have a first bend wherein portions of the levers extend away from each other with an angle between the two levers of approximately 90 degrees. A change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to extend the levers of *Danylieko* from each other at an angle of 35 degrees because Applicant has not disclosed that 35 degrees provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally as well with levers extending at an angle of approximately 90 degrees because the handles would still be positioned within easy reach of a user. Therefore, it would have been an obvious matter of design choice to modify *Danylieko* to obtain the invention as specified in claim 4.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

CYBEX (Commercial Strength Systems product brochure, pgs. 34-36, 2000) discloses various exercise machines comprising weight plate supporting lever arms pivotally secured at distal ends to a support frame including a bench for supporting a user.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (703) 308-2865. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time. The facsimile number for submitting papers directly to the examiner for informal correspondence is (703) 746-4891. The facsimile number for submitting Official papers to Technology Center 3700 is (703) 872-9302 and for submitting papers After Final to Technology Center 3700 is (703) 872-9303.

Any Inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 3700 receptionist at (703) 308-0858.



Victor K. Hwang
June 25, 2003

Jerome W. Donnelly
Primary Examiner

